

### **REMARKS**

In view of the following remarks responsive to the Office Action dated November 26, 2008, Applicants respectfully requests favorable reconsideration of this application.

The Office Action of November 26, 2008 is the first Office Action after the filing of an Appeal Brief in this case. The Office reopened prosecution in view of the Appeal Brief. Claims 1-21 are pending in this case.

The Office rejected claims 1-21 under 35 U.S.C. §103(a) as being unpatentable over Arora in view of Lewis and Hynes. Arora is the primary reference relied on by the Office and has an effective filing date of December 13, 2002, which is after the filing date of the present application. Accordingly, as explained in response to previous Office Actions and in the Appeal Brief in this case, Arora per se is not a prior art reference to the present application. However, Arora claims priority to a provisional application filed December 13, 2001.

The present application was filed on March 1, 2002. Accordingly, December 13, 2001 is less than one year prior to the filing date of the present application. Accordingly, if Applicants establish a date of invention prior to December 13, 2001, Arora would not constitute prior art to the present invention and the present rejection of all of the claims would be overcome.

Applicants did, in fact, conceive and reduce to practice the present invention prior to December 13, 2001.

The attached Declaration was signed by all three named inventors. However, Mr. Brown faxed his signature page to the undersigned attorney incorrectly (upside down) and the pages received from Mr. Brown and submitted herewith do not contain his signature. A Supplemental Reply will be filed as soon as Mr. Brown's signature is received.

The attached Declaration establishes reduction to practice prior to December 13, 2001 of the invention claimed in all of claims 1-16 and 18-21. Furthermore, claim 17 depends from claim 8 and recites an alternative

embodiment in which the inventive software monitors other software to detect transactions (as contrasted with an embodiment in which the inventive software is called by another program). Although the Office has listed this claim as rejected, there is no discussion of it or its recitation in the body of the Office Action. Accordingly, no prima facie case of anticipation or obviousness has been presented against it. Therefore, it also is patentable because it distinguishes over the prior art of record. Accordingly, the rejection is overcome.

### **Conclusion**

In view of the foregoing amendments and remarks, Applicant asserts that the pending claims are in condition for allowance and respectfully request that the Office issue a Notice of Allowance at the earliest possible date. The Office is invited to contact Applicant's undersigned counsel by telephone call in order to further the prosecution of this case in any way.

Respectfully submitted,

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